

do so and to not disclose it on the CDC's financial statements. If the jury reaches any of these conclusions, Mr. Smith will be acquitted.

Father Wright is a key witness. His credibility and conduct will be at issue. A jury will have to decide how plausible it is that Father Wright authorized only a portion of the additional compensation or that he was duped. In determining whether Father Wright authorized Mr. Smith to receive the additional undisclosed compensation, and whether Mr. Smith reasonably believed Father Wright had authority to do so, there are specific documents we have requested relating to specific transactions which are material and will be evidence at trial to assist the jury in determining whether Father Wright's version of events is credible.

B. Mr. Smith is Entitled to Documents that Establish that Father Wright Authorized Additional Compensation to Himself and Others.

Father Wright was not duped. He is a financially sophisticated attorney. He arranged for other Diocesan employees to receive compensation through the Zgoznic Entities, so that it would not be disclosed on the CDC's books and records. He has a history of engaging in transactions where he provides compensation to people without additional authorization which are not disclosed on the CDC's books and records. There is documentation of these transactions which we have requested, which includes the following:

1. Father Wright gave his secretary, Maria Milos, \$63,000 in CDC funds in July 1996 without any additional authorization. Although initially listed as a receivable on the CDC's books, Father Wright removed it in June 2000. In preparation for this trial, Father Wright has put it back on the books of the CDC's affiliate, the Catholic Cemeteries Association ("CCA"), of which Father Wright is Chief Executive Officer. We request the documentation relating to the payment of additional compensation to Ms. Milos and the general ledger entries by which it was

placed on, removed from and recently replaced on the financial records of the CDC and CCA, and any evidence of any authorization for this transaction by anyone other than Father Wright.

2. At Father Wright's direction, since November 1998, CCA has made payments in excess of \$500,000 to Kennick Die & Mold, which is owned by a close friend of his. To conceal these payments, Father Wright arranged for the payments to be made initially to a subsidiary of CCA, Basilica Memorial Products, Inc., which in turn made the payments to Kennick.⁶ We request the documentation of these transactions between CCA, Basilica and Kennick, any evidence of authorization for these transactions by anyone other than Father Wright, and documentation of other transactions through Basilica.

3. Father Wright has authorized additional compensation to a number of CDC and CCA employees.⁷ For each, we request the invoice, check voucher, evidence of authorization of these payments by anyone other than Father Wright, and any other documentation regarding these payments. These transactions include the following:

CDC

<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
3020	12/15/1997	\$2,000.00
345	2/3/1997	\$2,500.00
3110	12/19/1997	\$2,000.00
5714	1/29/1999	\$4,500.00

CCA

<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
41550	7/8/1999	\$16,000.00
63562	7/21/2003	\$ 500.00
64077	9/2/2003	\$ 500.00
64506	10/6/2003	\$ 500.00

⁶ In response to our request, the CDC produced records relating to the transfers directly from CCA to Kennick in 1998 and 1999. However, it withheld the transfers which were concealed by being routed through Basilica Memorial Products. These include the transfers on the list attached as Ex. C, which is through June 10, 2003. However, the transfers have continued to the present.

⁷ As discussed below, none of these payments were processed by the payroll department or reported to the IRS.

4. Father Wright himself received additional compensation from the CDC and CCA that was not characterized as such on their books and records. For each, we request the check voucher, invoice, any evidence that anyone other than Father Wright authorized the payment, and any other documentation regarding the transaction. These transactions include the following:

CCA

<u>Payee</u>	<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
Race Track Chaplaincy of America	63766	8/6/2003	\$ 500.00
Race Track Chaplaincy of America	60016	11/1/2002	\$ 500.00
Race Track Chaplaincy of America	51444	4/25/2001	\$ 500.00
Ford Credit	61930	3/11/2003	\$24,470.00

CDC

<u>Payee</u>	<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
Catholic Diocese of Cleveland	12582	6/29/2000	\$15,000.00
The Provident Bank ⁸		1/12/1992	\$ 8,400.00

5. Renee Bales, wife of Deacon Jerry Balcs, was paid \$800 a month from June 15, 2000 through April 1, 2003 at Father Wright's direction. For each of the payments listed on Exhibit E, attached, we request the check voucher, evidence that anyone other than Father Wright authorized the payment, and any other documentation regarding the transaction. In addition, we request documentation showing how these payments were accounted for on the books and records of the CDC.

6. Father Wright (and others) also provided additional compensation to himself and others through payments to relatives. For each, we request the invoice, check voucher, and documentation reflecting who authorized these payments. These payments include the following:

⁸ A copy of the cashier's check purchased with that check is attached as Exhibit D.

CDC

<u>Payee</u>	<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
Orion Consulting	5550	1/7/1999	\$30,500.00
Orion Consulting	10011	3/17/2000	\$12,930.00
Orion Consulting	11963	6/2/2000	\$11,831.00
Orion Consulting	12209	6/15/2000	\$21,199.00
Orion Consulting	12596	6/30/2000	\$14,400.00
Stephen T. Keefe	366	2/3/1997	\$ 734.00
Stephen T. Keefe	367	2/3/1997	\$ 54.80
Stephen T. Keefe	180	4/24/1997	\$ 73.08
Stephen T. Keefe	181	4/24/1997	\$ 2,014.00
Stephen T. Keefe	231	4/24/1997	\$ 1,084.00
Stephen T. Keefe	232	4/24/1997	\$ 117.03
Stephen T. Keefe	3806	3/31/1998	\$ 750.00

CCA

<u>Payee</u>	<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
Wright Landscaping	44491	1/14/2000	\$ 480.00
Wright Landscaping	44566	1/21/2000	\$ 480.00
Wright Landscaping	39389	12/29/1998	\$ 720.00
Wright Landscaping	39552	1/14/1999	\$ 720.00
Wright Landscaping	39803	2/4/1999	\$ 720.00
Wright Landscaping	40052	3/4/1999	\$ 720.00

7. The Diocese maintains several types of personnel files for each priest, including files entitled "Confidential" and "Secret".⁹ The Confidential and Secret files include information regarding misconduct by, and disciplinary action taken against, that priest. Diocesan officials are aware of the transactions engaged in by Father Wright described herein involving the granting of additional compensation, the use of off-book accounts, and the additional compensation of \$270,000 paid to Mr. Smith to which Father Wright admits. Father Wright's Secret and Confidential files will establish whether any disciplinary action has been taken against him for these transactions, or whether the CDC's own records establish that he was authorized to pay additional undisclosed compensation to Mr. Smith and others.

⁹ Bishop Pilla testified to the existence and content of these files in *Kodger, et al. v. Catholic Diocese of Cleveland, et al.* 03-CV-497769 (Cuyahoga C.C.P. 2003). At the Court's request, we can submit this testimony for its review.

In addition, we are aware of other conduct by Father Wright which is relevant to his credibility, which we would prefer not to disclose in a public filing, but about which we will inform the Court *in camera*, if the Court requires. We expect that evidence regarding this conduct also will be reflected in Father Wright's Secret and Confidential files, which we request be ordered produced.

8. The indictment alleges that "[N]o formal entries were made on the Diocesan records" regarding the \$270,000 in additional compensation paid to Mr. Smith. (ECF 1, ¶ 33). That is not true. Entries were made at the instruction of Father Wright, which concealed the nature of the transactions. We have the entry for the 1997 payment of \$85,000. We request the entry for the 1996 payment of \$185,000. We intend to show the jury the methods by which Father Wright used general ledger entries to conceal the payment of additional compensation to numerous employees and to conceal other transactions, which will further negate his claim that he was somehow "duped" by the defendants.

C. **Mr. Smith is Entitled to Documents that Establish that the CDC Utilized Off-Book Accounts as a Means of Providing Additional Compensation to Employees.**

Mr. Smith reasonably believed that Father Wright was authorized to grant him additional compensation that did not appear on the CDC's financial statements, in part because it was a common practice while Father Wright was Chief Financial and Legal Officer of the CDC and Chief Executive of CCA. During Father Wright's tenure, CDC employees received additional compensation that did not appear on the CDC's financial statements, and maintained accounts that used the CDC's tax I.D. number, yet did not appear on the CDC's financial statements. We have requested specific documents regarding these transactions and extensive use of off-book accounts, which include the transactions described above and the following: